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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 794

ABRAHAM S. RATNER,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

APPEAL FROM THE SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, APPELLATE DEPARTMENT, STATE OF CALIFORNIA.

PETITION FOR REHEARING.

MORRIS LAVINE,
STANLEY MOFFATT,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

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ABRAHAM S. RATNER,

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vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

Appellee.

PETITION FOR REHEARING.

Comes now the petitioner, Abraham S. Ratner, and respectfully petitions for a rehearing in this cause upon the following grounds, to-wit:

I.

That the substantial question and importance of the question herein involved concerns every state and every city.

II.

That the case at bar is distinguishable from the cases cited by the court in its memorandum opinion.

III.

That the court overlooked and did not decide the important question that the statute (Section 511, California Ve-

hicle Code) inherently and as construed and applied in this case shifts the burden of proof to the defendant, and thus is constitutionally not permissible under the Fourteenth Amendment to the Constitution of the United States.

IV.

That the statute, inherently and as construed and applied in this case, raises a statutory presumption in violation of due process of law.

The statutes involved are sections 510 and 511 of the Vehicle Code of California.

Section 510 provides as follows:

> "Basic Speed Law. No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property."

Section 511 provides as follows:

> "Prima Facie Speed Limits. The speed of any vehicle upon a highway not in excess of the limits specified in this section is lawful unless clearly proved to be in violation of the basic rule declared in section 510 hereof.
>
> "The speed of any vehicle upon a highway in excess of any of the limits specified in this section is prima facie unlawful *unless the defendant establishes by competent evidence that said speed in excess of said limits did not constitute a violation of the basic rule declared in section 510 hereof at the time, place and under the conditions then existing.*" (Italics ours.)

The prima facie limits referred to above are as follows:

> "(a) * * *
> "(b) * * *

"(c) Twenty-five miles per hour in any residence district."

(This is the section which was involved in the charge against appellant.)

Today more than ever the rights and duties of citizens throughout the country with respect to driving automobiles are of fundamental importance, because adjudged violations of penal statutes are not only grounds for revocation of drivers' licenses, but for revocation of gas rationing, and therefore, whether the statutes in question are within the scope of constitutional guaranties under the Fourteenth Amendment to the United States Constitution becomes of vital importance.

Title 28, U. S. Code section 344, (Judicial Code) provides as follows:

"(a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon appeal. The appeal shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the appeal."

Jurisdiction, therefore, to review the statute is granted by this section.

This case is easily distinguishable from the cases cited by the Court in its memorandum opinion.

The only question raised in the case of *United States* v. *Ragen*, 314 U. S. 513, 86 L. Ed. 383, is the construction of an income tax statute,—as to whether the word "reasonable" in connection with a deduction of income tax was a "reasonable standard of conduct," or whether it was too vague to afford a practial guide to permissible conduct. This Court held that under the particular case the statute was not too vague and indefinite.

Section 510 of the Vehicle Code of California, however, does not afford such a standard or guide. It says that "No person shall drive a vehicle upon a highway at a speed greater than *is reasonable or prudent* having due regard for the traffic on, and the surface and width of the highway, and in no event at a speed which endangers the safety of persons or property."

Thus, under the statute each driver is called upon to determine (1) what is reasonable; (2) what is prudent; (3) what is due regard for the traffic on, (4) and the surface; (5) and width of the highway; (6) what is a speed which endangers the safety of persons or (7) property.

The statute therefore lets every driver of every automobile, whether he has good eyesight or bad eyesight, whether he is a man of intelligence and education or is uneducated; every police officer; every traffic patrolman; every judge and every juror, to consider each of these seven different requirements and determine for himself what the statute really prohibits and punishes.

Thus the statute leaves open the widest conceivable inquiry into speed or lack of speed, the scope of which no one can foresee, and the result of which no one can foreshadow or adequately guard against. This is forbidden under the Fourteenth Amendment.

United States v. *L. Cohen Grocery Co.*, 255 U. S. 89, 65 L. Ed. 520, 41 S. Ct. 298.

Int'l. Harvester Co. v. *Kentucky*, 234 U. S. 216, 58 L. Ed. 1284.
Collins v. *Kentucky*, 234 U. S. 634, 58 L. Ed. 1510.

And in *Pierce* v. *United States*, 314 U. S. 305, 311, and *Lanzetta* v. *New Jersey*, 306 U. S. 451, 83 L. Ed. 888, declaring that it is a fundamental concept that crimes must be defined with appropriate definiteness.

The following cases hold speed laws void which are vague and uncertain:

State of W. Va. v. *Lantz*, 90 W. Va. 738, 111 S. E. 766.
Ex parte L. L. Slaughter, 92 Tex. Co. Rep. 212, 243 S. W. 478.
Hayes v. *State*, 11 Ga. App. 371, 75 S. E. 523.
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Russell v. *State*, 88 Tex. Cr. Rep. 512, 228 S. W. 566.
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Ex parte Carrigan, 92 Tex. Cr. Rep. 309, 244 S. W. 604.
Griffin v. *State*, 218 S. W. 494 (Texas).

The result of Section 510 of the Vehicle Code of California is to allow every traffic officer in the State to make his own determination of what is "a reasonable or prudent" speed under a particular given circumstance, varying with weather conditions, with the surface and width of the highway, with the traffic upon the highway, visibility, and the number of persons or property on the highway.

In this field the law is definitely capable of definition as to what is a "reasonable or prudent" speed, and what is a speed "which endangers the safety of persons or prop-

erty," and which does not leave the entire question to the will and whim of any traffic officer who can, by his own opinion, hail a person into court with the possible result of loss of his driver's license, his O. P. A. rationing license, and all of the other serious consequences which flow from such determination.

This being a country of laws and not of men, it is important that the laws be sufficiently definite so as not to subject every automobile driver to the whim, caprice or determination of any single officer. It is not difficult for legislatures to fix traffic laws which are definite and certain, so that no penal consequences flow from such uncertainty and vagueness and which subject the citizens to penal consequences.

Bearing in mind also that these statutes affect thousands of citizens now driving motor vehicles all over the country, we respectfully submit that the question is substantial and should be determined by this highest court, as it affects citizens everywhere.

It must be borne in mind too, that many states have statutes which declare such penal violations negligence per se in civil actions, and hence there should be a definite and certain standard fixed. We may say that in practically all of the states a violation of the penal statutes constitutes a prima facie case of negligence per se.

II.

Section 511 of the Vehicle Code apparently was overlooked by this Court.

This section shifts the burden of proof to the defendant to establish his innocence, and is therefore violative of fundamental concepts of due process of law, because this section requires the defendant to prove his innocence; whereas, under due process of law it is fundamental that

the state prove the defendant guilty. Thus thousands of drivers of automobiles are called on to prove their innocence in these cases.

In *Tot* v. *United States*, 319 U. S. 463, 87 L. Ed. 1519, this Court said in regard to a presumption created by law which would shift the burden of proof to the defendant:

> "It is not too much to say that the presumptions created by the law are violent, and inconsistent with any argument drawn from experience.
>
> "Nor can the fact that the defendant has the better means of information, standing alone, justify the creation of such a presumption. In every criminal case the defendant has at least an equal familiarity with the facts and in most a greater familiarity with them than the prosecution. It might, therefore, be argued that to place upon all defendants in criminal cases the burden of going forward with the evidence would be proper. But the argument proves too much. If it were sound, the legislature might validly command that the finding of an indictment, or mere proof of the identity of the accused, should create a presumption of the existence of all the facts essential to guilt. This is not permissible."

(See also, *Morrison* v. *California*, 291 U. S. 90; *McFarland* v. *American Sugar Ref. Co.*, 241 U. S. 79, 86, 60 L. Ed. 899; *Manley* v. *Georgia*, 279 U. S. 1, 73 L. Ed. 575.)

In Section 511 of the Vehicle Code of California the legislature made the speed of any vehicle upon the highway in excess of the uncertain provisions of Section 510, or those contained in Section 511, prima facie unlawful "unless the defendant establishes by competent evidence that any said speed in excess of said limits did not constitute a violation of the basic rule declared in section 510 hereof, at the time, place and under the conditions then existing."

This definitely shifts the burden of proof and compels every person arrested by every police officer in a traffic case

to defend himself on whether he has driven a vehicle upon a highway at a speed greater than is reasonable and prudent, having due regard for the traffic on, and the surface and width of the highway, and in no event, at a speed which endangers the safety of persons or property on the highway. By this provision thousands of motorists are brought into court to defend themselves under a procedure which, it is respectfully submitted, is unconstitutional, because they are prima facie guilty, when they are arrested.

This violates the doctrines laid down in *Tot* v. *United States*, 319 U. S. 463, 473, 87 L. Ed. 1519; *Mobile, J. & K. C. R. Co.* v. *Turnipseed*, 219 U. S. 35, 55 L. Ed. 78, 31 S. Ct. 136; *Manley* v. *Georgia*, 279 U. S. 1, 73 L. Ed. 575, 49 S. Ct. 215; *Western & A. R. Co.* v. *Henderson*, 279 U. S. 639, 73 L. Ed. 884, 49 S. Ct. 445; *Morrison* v. *California*, 291 U. S. 82, 78 L. Ed. 664, 54 S. Ct. 281; *Hawes* v. *Georgia*, 258 U. S. 1, 66 L. Ed. 431, 42 S. Ct. 204; *Yee Hem* v. *United States*, 268 U. S. 178, 69 L. Ed. 904, 45 S. Ct. 470. And see *Powers* v. *State*, 204 Ind. 472, 184 N. E. 549, 86 A. L. R. 166.)

It is therefore respectfully submitted that the question is substantial and important throughout the country, and that a rehearing should be granted.

Respectfully submitted,

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